

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **XAVIER MARTINEZ, M.D.**

4 Holder of License No. **18944**
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Board Case No. MD-07-0638A

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

(Letter of Reprimand and Probation)

7 The Arizona Medical Board ("Board") considered this matter at its public meeting on June
8 4, 2008. Xavier Martinez, M.D., ("Respondent") appeared before the Board with legal counsel
9 Kraig J. Marton for a formal interview pursuant to the authority vested in the Board by A.R.S. §
10 32-1451(H). The Board voted to issue Findings of Fact, Conclusions of Law and Order after due
11 consideration of the facts and law applicable to this matter.

12 **FINDINGS OF FACT**

13 1. The Board is the duly constituted authority for the regulation and control of the
14 practice of allopathic medicine in the State of Arizona.

15 2. Respondent is the holder of License No. 18944 for the practice of allopathic
16 medicine in the State of Arizona.

17 3. The Board initiated case number MD-07-0638A after receiving an anonymous
18 complaint that Respondent had a substance abuse problem with cocaine and Vicodin and that he
19 allowed his office manager to perform healthcare tasks without a valid license or certificate.
20 Board staff investigated the complaint and did not substantiate the allegations; however,
21 Respondent admitted other acts of unprofessional conduct.

22 4. Respondent prescribed a controlled substance, Lorazepam, to his wife. He would
23 then take the Lorazepam for insomnia. Respondent also took Percocet that was prescribed to his
24 wife by her dentist and he purchased substantial amounts of Percocet while visiting Mexico.
25

5. Respondent was evaluated and diagnosed with Sedative/Hypnotic dependence. He successfully completed a ninety-day inpatient treatment program in November, 2007, and has been compliant with all treatment and Board recommendations.

6. During the investigation, Respondent provided the chart for patient AM, the individual that Respondent believed to be the anonymous complainant. AM resides in Wyoming and she is the sister of one of Respondent's employees.

7. Respondent acknowledges that he prescribed narcotic pain medication to AM for a period of over eighteen months based upon communications with her sister without physically evaluating AM or her response to the treatment.

CONCLUSIONS OF LAW

1. The Arizona Medical Board possesses jurisdiction over the subject matter hereof and over Respondent.

2. The Board has received substantial evidence supporting the Findings of Fact described above and said findings constitute unprofessional conduct or other grounds for the Board to take disciplinary action.

3. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(f) (“[h]abitual intemperance in the use of alcohol or habitual substance abuse;”) A.R.S. § 32-1401(27)(g) (“[u]sing controlled substances except if prescribed by another physician for use during a prescribed course of treatment;”) A.R.S. § 32-1401(27)(h) (“[p]rescribing or dispensing controlled substances to members of the physician’s immediate family;”) and A.R.S. § 32-1401(27)(ss) (“[p]rescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical examination of that person or has previously established a doctor-patient relationship.”).

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5

IT IS HEREBY ORDERED:

2. Respondent shall promptly enroll in and participate in the Board's Monitored
are Program ("MAP") for a period of 5 years. Respondent shall be given credit for the time
s participated in MAP pursuant to an Interim Consent Agreement. Respondent's
oation in MAP is subject to the following terms:

b. **1. Relapse Prevention Group.** Respondent shall attend MAP's relapse prevention group therapy sessions one time per week for the duration of this Order, unless excused by the MAP relapse prevention group facilitator for good cause such as illness or other emergency. Respondent shall instruct the MAP relapse prevention group facilitators to release to Board Staff, upon request, all records relating to Respondent's treatment, and to submit monthly reports to Board Staff regarding attendance and progress. The reports shall be submitted on or before the 10th day of each month.

3

1 following Respondent's discharge from chemical dependency treatment or (b) the date of this
2 Order.

3 3. Following completion of the ninety meetings in ninety days, Respondent shall
4 participate in a 12-step recovery program or other self-help program appropriate for substance
5 abuse as recommended by the MAP Director and approved by Board Staff. Respondent shall
6 attend a minimum of three 12-step or other self-help program meetings per week for a total of
7 twelve per month. Two of the twelve meetings must be Caduceus meetings. Respondent must
8 maintain a log of all self-help meetings. Board Staff will provide the log to Respondent.

9 4. **Board-Staff Approved Primary Care Physician.** Respondent shall promptly
10 obtain a primary care physician and shall submit the name of the physician to Board Staff in
11 writing for approval. The Board-approved primary care physician ("PCP") shall be in charge of
12 providing and coordinating Respondent's medical care and treatment. Except in an *Emergency*,
13 Respondent shall obtain medical care and treatment only from the PCP and from health care
14 providers to whom the PCP refers Respondent. Respondent shall request that the PCP
15 document all referrals in the medical record. Respondent shall promptly inform the PCP of
16 Respondent's rehabilitation efforts and provide a copy of this Order the PCP. Respondent shall
17 also inform all other health care providers who provide medical care or treatment that
18 Respondent is participating in MAP.

19 a. "*Emergency*" means a serious accident or sudden illness that, if not
20 treated immediately, may result in a long-term medical problem or loss of life.

21 5. **Medication.** Except in an *Emergency*, Respondent shall take no *Medication*
22 unless the PCP or other health care provider to whom the PCP refers Respondent prescribes
23 the *Medication*. Respondent shall not self-prescribe any *Medication*.

24 a. "*Medication*" means a prescription-only drug, controlled substance,
25 and over-the counter preparation, other than plain aspirin, plain ibuprofen, and

1 plain acetaminophen.

2 6. If a controlled substance is prescribed, dispensed, or is administered to
3 Respondent by any person other than PCP, Respondent shall notify the PCP in writing within 48
4 hours and notify the MAP Director immediately. The notification shall contain all information
5 required for the medication log entry specified in paragraph 7. Respondent shall request that the
6 notification be made a part of the medical record. This paragraph does not authorize
7 Respondent to take any *Medication* other than in accordance with paragraph 5.

8 7. **Medication Log.** Respondent shall maintain a current legible log of all
9 *Medication* taken by or administered to Respondent, and shall make the log available to the
10 Board Staff upon request. For *Medication* (other than controlled substances) taken on an on-
11 going basis, Respondent may comply with this paragraph by logging the first and last
12 administration of the *Medication* and all changes in dosage or frequency. The log, at a minimum,
13 shall include the following:

- 14 a. Name and dosage of *Medication* taken or administered;
- 15 b. Date taken or administered;
- 16 c. Name of prescribing or administering physician;
- 17 d. Reason *Medication* was prescribed or administered.

18 This paragraph does not authorize Respondent to take any *Medication* other than in accordance
19 with paragraph 5.

20 8. **No Alcohol or Poppy Seeds.** Respondent shall not consume alcohol or any
21 food or other substance containing poppy seeds or alcohol.

22 9. **Biological Fluid Collection.** During all times that Respondent is physically
23 present in the State of Arizona and such other times as Board Staff may direct, Respondent
24 shall promptly comply with requests from Board Staff or MAP Director to submit to witnessed
25 biological fluid collection. If Respondent is directed to contact an automated telephone message

1 system to determine when to provide a specimen, Respondent shall do so within the hours
2 specified by Board Staff. For the purposes of this paragraph, in the case of an in-person
3 request, "promptly comply" means "immediately." In the case of a telephonic request, "promptly
4 comply" means that, except for good cause shown, Respondent shall appear and submit to
5 specimen collection not later than two hours after telephonic notice to appear is given. The
6 Board in its sole discretion shall determine good cause.

7 **10.** Respondent shall provide Board Staff in writing with one telephone number
8 that shall be used to contact Respondent on a 24 hour per day/seven day per week basis to
9 submit to biological fluid collection. For the purposes of this section, telephonic notice shall be
10 deemed given at the time a message to appear is left at the contact telephone number provided
11 by Respondent. Respondent authorizes any person or organization conducting tests on the
12 collected samples to provide testing results to the Board and the MAP Director.

13 **11.** Respondent shall cooperate with collection site personnel regarding
14 biological fluid collection. Repeated complaints from collection site personnel regarding
15 Respondent's lack of cooperation regarding collection may be grounds for termination from
16 MAP.

17 **12. Out of State Travel and/or Unavailability at Home or Office Telephone**
18 **Number.** Respondent shall provide Board Staff at least three business days advance
19 written notice of any plans to be away from office or home when such absence would prohibit
20 Respondent from responding to an order to provide a biological fluid specimen or from
21 responding to communications from the Board. The notice shall state the reason for the
22 intended absence from home or office, and shall provide a telephone number that may be used
23 to contact Respondent.

24 **13. Payment for Services.** Respondent shall pay for all costs, including
25 personnel and contractor costs, associated with participating in MAP at time service is

1 rendered, or within 30 days of each invoice sent to Respondent.

2 **14. Examination.** Respondent shall submit to mental, physical, and medical
3 competency examinations at such times and under such conditions as directed by the Board to
4 assist the Board in monitoring Respondent's ability to safely perform as a physician and
5 Respondent's compliance with the terms of this Order.

6 **15. Treatment.** Respondent shall submit to all medical, substance abuse, and
7 mental health care and treatment ordered by the Board.

8 **16. Obey All Laws.** Respondent shall obey all federal, state and local laws, and
9 all rules governing the practice of medicine in the State of Arizona.

10 **17. Interviews.** Respondent shall appear in person before the Board and its
11 Staff and MAP committees for interviews upon request, upon reasonable notice.

12 **18. Address and Phone Changes, Notice.** Respondent shall immediately
13 notify the Board in writing of any change in office or home addresses and telephone numbers.

14 **19. Relapse, Violation.** In the event of chemical dependency relapse by
15 Respondent or Respondent's use of drugs or alcohol in violation of the Order, Respondent shall
16 promptly enter into an Interim Consent Agreement for Practice Restriction that requires, among
17 other things, that Respondent not practice medicine until such time as Respondent successfully
18 completes a long-term inpatient or residential treatment program for chemical dependency
19 designated by Board Staff and obtains affirmative approval from the Board or the Executive
20 Director to return to the practice of medicine. Prior to approving Respondent's request to return
21 to the practice of medicine, Respondent may be required to submit to witnessed biological fluid
22 collection, undergo any combination of physical examination, psychiatric or psychological
23 evaluation and/or successfully pass the special purpose licensing examination or the Board may
24 conduct interviews for the purpose of assisting it in determining the ability of Respondent to
25 safely return to the practice of medicine. **In no respect shall the terms of this paragraph**

1 restrict the Board's authority to initiate and take disciplinary action for violation of this
2 Order.

3 **20. Notice Requirements.**

4 (A) Respondent shall immediately provide a copy of this Order to all employers
5 and all hospitals and free standing surgery centers where Respondent currently has privileges.
6 Within 30 days of the date of this Order, Respondent shall provide the Board with a signed
7 statement of compliance with this notification requirement. Upon any change in employer or
8 upon the granting of privileges at additional hospitals and free standing surgery centers,
9 Respondent shall provide the employer, hospital or free standing surgery center with a copy of
10 this Order. Within 30 days of a change in employer or upon the granting of privileges at
11 additional hospitals and free standing surgery centers, Respondent shall provide the Board with
12 a signed statement of compliance with this notification requirement.

13 (B) Respondent is further required to notify, in writing, all employers, hospitals
14 and free standing surgery centers where Respondent currently has or in the future gains
15 employment or privileges, of a chemical dependency relapse, use of drugs or alcohol in violation
16 of this Order and/or entry into a treatment program. Within seven days of any of these events
17 Respondent shall provide the Board written confirmation of compliance with this notification
18 requirement.

19 **21. Public Record.** This Order is a public record.

20 **22. Out-of-State.** In the event Respondent resides or practices as a physician in
21 a state other than Arizona, Respondent shall participate in the rehabilitation program sponsored
22 by that state's medical licensing authority or medical society. Respondent shall cause the
23 monitoring state's program to provide written reports to the Board regarding Respondent's
24 attendance, participation, and monitoring. The reports shall be due quarterly on or before the
25 15th day of March, June, September, and December of each year, until the Board terminates

1 this requirement in writing. The monitoring state's program and Respondent shall immediately
2 notify the Board if Respondent: a) is non-compliant with any aspect of the monitoring
3 requirements; b) relapses; c) tests positive for controlled substances; d) has low specific gravity
4 urine drug test(s), missed and/or late urine drug tests, or otherwise rejected urine drug tests; and
5 e) is required to undergo any additional treatment.

6 23. The Board retains jurisdiction and may initiate new action based upon any
7 violation of this Order.

8 RIGHT TO PETITION FOR REHEARING OR REVIEW

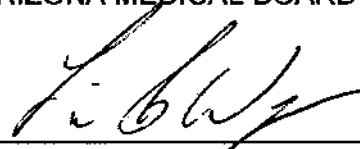
9 Respondent is hereby notified that he has the right to petition for a rehearing or review.
10 The petition for rehearing or review must be filed with the Board's Executive Director within thirty
11 (30) days after service of this Order. A.R.S. § 41-1092.09(B). The petition for rehearing or review
12 must set forth legally sufficient reasons for granting a rehearing or review. A.A.C. R4-16-103.
13 Service of this order is effective five (5) days after date of mailing. A.R.S. § 41-1092.09(C). If a
14 petition for rehearing or review is not filed, the Board's Order becomes effective thirty-five (35)
15 days after it is mailed to Respondent.

16 Respondent is further notified that the filing of a motion for rehearing or review is required
17 to preserve any rights of appeal to the Superior Court.

18 DATED this 9th day of October, 2008.



20 THE ARIZONA MEDICAL BOARD

21 By 
22 LISA S. WYNN
23 Executive Director

24 ORIGINAL of the foregoing filed this
25 9th day of October, 2008 with:

Arizona Medical Board
9545 East Doubletree Ranch Road

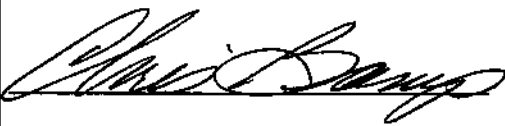
1 Scottsdale, Arizona 85258

2 Executed copy of the foregoing
mailed by U.S. Mail this

3 20 day of October, 2008, to:

4 Kraig J. Marton, Esq.
JABURG & WILK, P.C.
5 3200 N. Central Avenue, 20th Floor
Phoenix, Arizona 85012-2440

6
7 Xavier Martinez, M.D.
Address of Record

8
9 

10 #236920